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The Reform of Legal Aid in Sweden†

In July, 1973, significant changes in Sweden's system of legal assistance[1] went into effect. Many provisions in the legal aid reform (*rättshjälpsreformen*)[2] were directly responsive to weaknesses of the existing program. Yet, at the same time (and in part reflecting the political power of the legal profession), the new system retained considerable continuity with its predecessor because many features were a rationalization and extension of Sweden's existing legal aid institutions.

Consistent with the egalitarian character of Swedish society generally and the program of the ruling Social Democratic (a European socialist) party, the principle purpose of the *rättshjälpsreform* is to equalize access to legal services by enabling everyone to obtain legal assistance in any matter in which he needs it. The reform minimizes the role of individual income as a rationing device for legal assistance by providing for means-tested legal aid to a party in issues before a general court, an administrative court or agency, or in arbitration, and for legal advice about any legal matter. Yet the reform serves other purposes as well; in particular, the new system seeks partially to control the costs of litigation and also to help remedy some social problems (especially family relationships) by making legal services more readily available in many environments hitherto not adequately served. More subtly, the reform also initiates a partial "socialization" of the legal profession in the sense in which other professions—notably medicine—already have been in Sweden.

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[1]The term "legal assistance" is used herein to mean the provision of legal services at full or partial state expense, subsuming both "legal aid" and "legal advice."

[2]*Rättshjälpslag* (Legal Aid Act) SFS 1972: 429 [hereinafter cited as RHL] subsequently amended by SFS 1973: 118, SFS 1973: 164; SFS 1973:247; and SFS 1973: 659. "SFS" is the abbreviation for *Svensk författningsamling*, the official record of Swedish legislation. See R. Ginsburg & A. Bruzelius, *Civil Procedure in Sweden* (1965) [hereinafter cited as Ginsburg & Bruzelius]. The government also issued a decree, *Kungl. Maj: ts rättshjälpskungorelse*, (Legal Aid Decree), SFS –

The *rättshjälpsreform* has come at a time of transnational ferment in legal aid schemes generally;[3] in the early years of the 1970s several important European countries have altered significantly their delivery of legal services to the poor and low income groups and in some cases to people of moderate means. In a comprehensive article,[4] Mauro Cappelletti and James Gordley have catalogued the many (national) "variations of a modern theme," a theme of placing the poor or low income litigant on an equal footing with his more well-to-do adversary. In their discussion, the authors identified two major approaches to this policy problem, labeling them as a "juridical right" and "welfare right" approach. This article adopts that conceptual framework to describe and evaluate Sweden's *rättshjälpsreform*.

The first section outlines the distinguishing features of the juridical right and the welfare right approaches to legal aid as identified by the authors who coined the distinction. The second section summarizes legal aid in both criminal and civil cases as it existed prior to the reform in mid-1973 with a view to pointing out the weaknesses and deficiencies which the reform was (in part) intended to remedy. The third section describes the new scheme by looking briefly at its origins and outlining the benefits provided, the standards for eligibility, administration of the law, and so on, generally characterizing the features in each case as typical of a juridical or welfare right approach. The last section offers the conclusion that the new system is a multi-purposed modern program heavily committed to an essentially juridical approach with significant but secondary welfare features.

I. Juridical Right vs. Welfare Right

A useful conceptual framework within which to analyse legal aid systems is the Cappalletti and Gordley distinction mentioned above. Each of the two major approaches identified by them has characteristic goals and means with implications for the program's structure and implementation.

A. *Legal Aid as a Juridical Right*[5]

Legal aid as a "juridical right" is the traditional approach to providing legal services and is an essentially legalistic and individual one involving a definition of the obligations of the state, a vesting of corresponding legal rights in individuals and the establishment of redress mechanisms (themselves of a

1973: 248, as well as instructions for the Public Law Offices and the Legal Aid Boards, SFS 1973: 249 and SFS 1973: 250 respectively.

[3]*See, generally*, Cappelletti, *Legal Aid in Europe: A Turmoil*, 60 A.B.A. J. 206 (1974). Zander, *English Legal Aid System at the Crossroads*, 59 A.B.A. J. 368 (1973).

[4]Cappelletti & Gordley, *Legal Aid: Modern Themes and Variations*, 24 STAN. L.R. 347 (1972).

[5]This summary of the juridical right approach paraphrases the material in the Cappelletti and Gordley article, *id.* at 391-393.

juridical character) if the obligations are not met. Put another way, the end under this approach is to assign individuals their rights and responsibilities, and the means are to provide objective legal standards and ensure their impartial application.

Both the end and the means have structural implications for a hypothetical program characteristic of the approach. In the first place, the emphasis on assignment of individual rights and responsibilities implies that the standards and the benefits of such a program are designed to help individuals enforce their legal rights by putting the poor and low income person on an equal footing in terms of legal counsel with their better off adversary. Secondly, the program places considerable responsibility on the individual legal aid recipient to identify his problem (or difficulty for which the legal system may offer a remedy) and for bringing it to the attention of someone in the program who may be able to help. And thirdly, as a consequence of emphasizing individual rights, it only by chance attacks problems that transcend the interests of the program's individual clients.

There are also three structural implications of the approach's standards. For one, the program is likely to have uniform eligibility criteria. For another it will be structured to ensure uniform, non-discriminatory application of the criteria. And third, again as a consequence, such a program's efficiency in terms of maximizing the legal "bank-for-the-buck" will be limited because of resources spent ensuring administrative uniformity.

Cappelletti and Gordley recognize that their bifurcation is a conceptual one and no existing program fits either paradigm exclusively without some mixture of elements of the other. Yet, they present the German and (pre-1972) English legal aid systems as good approximations of the juridical right approach.

B. *Legal Aid as a Welfare Right*[6]

With the emergence and proliferation of modern social rights such as the "rights" to decent housing and medical care, legal aid in modern times has not been linked exclusively to the traditional political right of formal access to the courts but in addition is being linked to a struggle against poverty and other conditions impeding access to these other social rights. Legal aid as a "welfare right" is therefore a modern approach involving the establishment of a government program staffed with lawyers using legal process to attack social conditions standing in the way of effective economic and social equality. To utilize again the end-means language, one can say the end is to ameliorate a complex of social conditions and the means is the rational allocation of limited financial and legal resources to produce maximum impact in terms of material benefit for a clientele, rather than a specific client.

[6]*See* Cappelletti and Gordley, *id.*, at 406-408.

Here, too, the end and means of the approach have structural implications for a legal aid program paralleling those emanating from the juridical right approach. Emphasis on the goal of attacking broad social conditions, for example, implies that a program adopting this approach will have standards and benefits emphasizing the pursuit of class (clientele) interests rather than individual (client) interests. In addition, it can be expected to deemphasize the responsibility of individual legal aid recipients and instead promote accessibility of service and the relationship between legal and social problems. And third, as a consequence, the program may have difficulty dealing with the individual needs of legal aid applicants concentrating instead on the relationship of an applicant's problem to the needs of the community generally.

The emphasis on rational allocation of resources for maximum impact implies first that a program's standards and benefits in individual cases will be determined by considerations of what will be most effective and not by the application of uniform national criteria. Secondly, the program is likely to be decentralized, geographically dispersed and structured to rely on local initiative and response to the particular problem(s) most acute in the specific community served. Finally, as a result, the program is likely to deal with individual aid applicants in an arbitrary manner.

Cappelletti and Gordley suggest that the Office of Economic Opportunity Legal Services Program associated with the "war on poverty" in the United States best fits the welfare right paradigm.

C. *Possibilities for Hybrids*

It should be emphasized that each approach has significant inherent limitations as well as advantages. The welfare right approach leads to arbitrariness from the standpoint of the individual beneficiary and diverts resources from alleviating specific individual problems to articulate common grievances or challenging certain aspects of the existing legal scheme. The juridical right approach on the other hand must de-emphasize obtaining the most efficient allocation of resources and not attempt to deal with recurring problems or conditions which may ultimately be at the core of the individual legal aid client's concern. This raises the possibility that a hybrid program might be able to take advantage of the strengths of each approach while minimizing the impact of each's limitations.

Whether one or the other of these approaches, or a hybrid, is best suited for the design of a legal aid program in a specific country depends on a number of factors. Among the more important is the character of the country's political legal tradition, in particular, the willingness of its courts to change the law in class action test litigation and the degree to which relatively disadvantaged groups look to the courts rather than the legislature to help redress social imbalances. Important, too, is the legal profession and the confidence the

public has in it. Of course, how much effective economic and social equality there is in the country also is important in determining which approach is more appropriate in a particular setting.

At first glance, the new legal aid scheme which has recently gone into effect in Sweden might be characterized as a hybrid insofar as it calls upon the resources of the private legal profession and at the same time relies on the services of publicly funded salaried lawyers. By looking at some of the details of the Swedish system, it is possible to make a more complete judgment about this new program and its appropriateness in the Swedish setting.

II. Legal Assistance Prior to Reform[7]

There was no statutorily unified system of legal aid in Sweden prior to 1973, but instead the program was integrated into procedural law with much of the administration entrusted to the courts. One legal-aid-like statute was interrelated with the basic procedure code to form the structure of the system. The Code of Judicial Procedure (*Rättegångsbalk*)[8] designated costs for both civil and criminal cases and who was to bear them, while a statute, the Free Legal Proceedings Act (*Lag om fri Rättegång*)[9] provided an exemption for poor litigants to the otherwise applicable cost-bearing rules of the Procedure Code. Other institutional mechanisms (*e.g.* legal aid offices) provided attorneys and some legal advice. As we will see, the new Act replaces much of this with a wholly separate statute entrusting most administration to an administrative body, although the statutory interface of the new law with the Code of Judicial Procedure is still important as is the role of the courts.

A. *Legal Aid in Criminal Cases*

In theory, there has not been a means test in Sweden for court appointment and state compensation of counsel in criminal cases. The court would designate counsel even if the defendant had not requested one[10] where the court determined that the [defendant's] rights cannot be safeguarded without

[7]Except as otherwise noted, the brief summaries of prior law in this section are largely based on the following sources: Garrison, *Legal Service for Low Income Groups in Sweden*, 26 A.B.A. J. 215 (1940) [hereinafter cited as Garrison]; Royal Social Board, SOCIAL WORK AND LEGISLATION IN SWEDEN (1938) International Legal Aid Association, DIRECTORY OF LEGAL AID AND ADVICE FACILITIES AVAILABLE THROUGHOUT THE WORLD (1966) [not paginated; hereinafter cited as ILAA DIRECTORY]; and Ginsburg & Bruzelius, ch. 2 [also in Ginsburg & A. Bruzelius, *Professional Legal Assistance in Sweden*, 11 INT'L & COMP. L.Q. 997 (1962)].

[8]*Rättegångsbalk* (Code of Judicial Procedure) [hereinafter cited as RB]. An English translation is available in Ginsburg & Bruzelius, although numerous changes have been made since that date of publication.

[9]*Lag* (1919:367) *om fri rättegång* (Free Legal Proceedings Act), [hereinafter cited as FRIRG].

[10]A defendant or any litigant normally may defend himself in court without retaining counsel. In practice, in criminal cases, few if any persons are in court without the aid of a lawyer or *advokat*. (*Advokat* is a professional designation for law graduates with five years experience who are members of the Swedish Bar Association. See Ginsburg & Bruzelius at 65. I use "lawyer" throughout this article to refer to a law graduate whether or not an *advokat*.)

assistance.[11] As a rule, the court would designate an *advokat* requested by the defendant.[12] The *advokat's* fees were initially advanced by the government[13] from public funds and were set by reference to the then prevailing rates in the profession for comparable services. Other disbursements, such as those for expert witnesses, would also be covered by the state.

The accused was not expected to make any contribution to these expenses at the outset. However, Swedish procedure provides in effect that a defendant found guilty must reimburse the state for the expense of convicting him, unless—and this is the statutory interface—under the 1919 Free Legal Proceedings Act, the court authorized free legal proceedings because the defendant was indigent.[14] If acquitted, the state did not recover the funds advanced.[15] The net effect of these provisions was that an indigent defendant whether acquitted or found guilty had legal services provided to him at no charge. However, a defendant of adequate financial means received free legal counsel and proceedings only if he was successful in establishing his innocence.

B. *Legal Aid in Civil Cases*

Under the Free Legal Proceedings Act, persons of limited means could apply to the lower court in which they were a party for exemption from all the costs and fees of litigation.[16] Costs which could be waived included all court costs such as filing fees, and associated expenses such as costs incurred in serving process or reimbursing witnesses.[17] In addition, the court could order reimbursement of the poor person's lawyer for "necessary" expenses and "reasonable" attorney's fees, whether or not the person's claim or defense was successful.[18]

Free litigation was to be authorized by the court if the application met two tests, neither of which—in an international comparative sense—was very

[11]Ginsburg & Bruzelius at 77. *Cf.* RD § 21.3. The counsel designated had to be an *advokat* in most cases RB § 21.5.

[12]The court did not have to appoint the *advokat* requested by the defendant if to do so would have unreasonably argmented the costs of the proceedings. RB § 21.5.

[13]The terms "government," "state," and "administration" have disparate meanings and implications in Swedish and English. Swedes use the word "government" when Americans use "the administration" in referring to the political party and personalities shaping national policy at a particular point in time. The converse is also generally true, *i.e.*, a Swede used "administration" when an American would use "government." Moreover, Americans usually prefer the term "government" to "state" when referring to the public sector, *e.g.* as in "government-subsidized." Throughout this paper, Government (capital "G") means the ruling political administration of Sweden, and government (lower case "g") and interchangeably "state," refer to the public sector.

[14]In addition, if the legal costs stood in no reasonable proportion to the offense and to the means of the convicted person, the court had discretion to permit him to pay only a proportion of the costs, ILAA DIRECTORY at Sweden.

[15]RB § 31.1.

[16]FRIRG § 1.

[17]FRIRG §§ 3, 4, 5, 6, 12.

[18]FRIRG § 14. Note that private arrangements between the client and lawyer to circumvent the policy of this provision—such as an agreement by the person to supplement the court-designated fee at some later date—are unenforceable. This is true as well under the 1973 reform act. RHL § 23.

stringent. As to the applicant's financial means, there were no uniform standards for this determination; but, instead, courts looked at the person's income and assets (taking into account his dependents, health, fixed non-luxury obligations, etc.) in comparison with income and cost of living statistics to ascertain whether the applicant was "unable to litigate at his own expense"[19] or "whether the financial position of the party [was] such that he should enjoy this benefit."[20] As to an explicit test of the substantive merits of the claim, there was none. Instead, the second test inquired into the nature of the benefits gained by the applicant if judgment were favorable; the free litigation was authorized unless it was "obviously of minor importance to [the applicant] to have his case considered."[21]

In most cases in which legal proceedings were authorized, the court would assign counsel,[22] usually a lawyer associated with one of the county legal aid offices (*rättshjälpsanstalter*).[23] The party selected his own lawyer where he had a preference.

The *rättshjälpsanstalter* in Sweden were county and municipal legal aid offices offering (usually free but means-tested) legal services to residents, most of whom (two-thirds)[24] were of such limited financial means that they qualified for free legal proceedings under the 1919 Act. The offices were established at the county (*län*)[25] or municipal level, functioned under regulations issued by the national Ministry of Justice, and were financed largely by annual grants from the national government (50%) and local government units,[26] with the balance made up of funds from clients who could afford to meet some of the expense.

C. *Legal Advice*

There was no national plan for providing poor, low income or moderate means persons with free legal advice or advice at reduced cost.[27] However, the legal aid offices mentioned above offered legal advice as well as legal aid; and many county governments in addition to or in lieu of legal aid offices made agreements with the Swedish Bar Association (*Sveriges advokatsamfund*) which provided for legal advice to *län* residents unable to meet the standard fees for advice.[28] This system was called the *Jämtland* system, named after the *län* in which it originated.

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[19]Ginsburg & Bruzelius at 74, n. 119.
[20]Garrison at 215.
[21]Ginsburg & Bruzelius at 74. *See also*, Garrison at 215 and FRIRG § 1.
[22]FRIRG § 5.
[23]Grinsburg & Bruzelius at 75, n. 124.
[24]*Id.*, at 77. Others receiving litigation assistance were usually asked to contribute to the legal aid office's costs and expenses, n. 136.
[25]It should be noted that county (*län*) does not connote a rural area in Sweden. The country is divided up into 24 counties for regional government purposes, each a *län*.
[26]Garrison at 217. Ginsburg & Bruzelius at 77-78.
[27]ILAA DIRECTORY.
[28]Ginsburg & Bruzelius at 78.

Under the terms of the agreements, participating lawyers gave free advice at their office on the strength of an application made directly to the lawyer in which the applicant demonstrated financial need. The lawyer was paid a fee for the services out of public funds by the county government (*landsting*) which in turn was reimbursed by the national government for approximately one-half of the cost.[29]

D. *Weaknesses of the Old System*

In a comparative sense, legal assistance to the indigent and low income groups in Sweden was not seriously deficient prior to the changes introduced in 1973. However, from the point of view of putting the poor, low income, or moderate-means litigant on an equal footing with his adversary, there were weaknesses. The more serious salient are discussed below.

Although the program included an affirmative state obligation to pay for legal services needed by the poor, there was no guarantee that quality services would actually be available. In many counties, a person without resources to command the services of a private lawyer had to be satisfied with those offered by the legal aid office in his county; there were no procedures by which the potential litigant could choose his own private lawyer and have the state pay for the services. In counties with the *Jämtland* system, a person could choose among lawyers willing to give him advice, but the fees from public funds that this relationship would generate for the lawyer were less than what he would charge a client with means, and to take the case was thus to discharge his share of the honorific duty to the bar, policed by the Swedish Bar Association. In short, there were disparities and practical constraints on the client's choice of a lawyer.

The two major tests—eligibility and the soundness of the claim—were ambiguous. As we have seen above, there were no explicit rules in terms of income-tested eligibility, although in practice guidelines of sorts evolved through judicial interpretation of the Free Legal Proceedings Act. In addition, there was no "partial legal aid" whereby persons of moderate means—not poor enough to qualify for free legal proceedings, but not able to retain a private lawyer—could receive legal assistance consistent with their ability to pay. As to the test of the merits of the claim, there was probably at least a subtle disparity between its application by a lawyer at a legal aid office and by a private lawyer whose legal aid fee was less than he would otherwise charge, although this is exceedingly difficult to measure or prove.

Finally, at least two factors exacerbate the problem of rendering legal services

[29]If the applicant received as a result of the advice money amounting to over 1000 Swedish crowns (about $225), the lawyer would be paid from the excess over 1000 crowns, unless that excess was insufficient to cover the expenses and fees, in which case the difference would be paid out of public funds. ILAA DIRECTORY.

to low income groups and these are their ignorance of when the law will work for them and the felt psychological distance from the profession trained to work with the legal system in a client's behalf. Both may be ameliorated by a good system of legal advice and public information about legal rights. While the Swedish population is very well informed of the law generally, (both absolutely and in an international comparative sense) the country did lack a comprehensive legal advice program. Both can also be ameliorated by reducing geographic disparities in the availability of legal services as well as the physical accessibility of lawyers themelves. In this area too, there was room for substantial improvement.

III. Rättshjälpsreformen: The Legal Aid Reform Act of 1973

The reform law had its origins in a substantial study of the legal aid system prepared by the Swedish Justice Department and released in late 1970.[30] As is the pattern of proposed legislation in Sweden, the memorandum was circulated to various groups, institutions and agencies which might be affected by a change in the system or who could be expected to have convictions about the shape and character of any proposed changes.

The study met with sharp criticism from several quarters—most notably, and predictably, from the private legal profession. Indeed, in a discussion of the reform proposal in the journal of the Swedish Bar Association (*Tidskrift for Sveriges Advokatsamfund*), a spokesman for the profession wrote that the study "could not possibly be a foundation for legislation."[31] Various critics thought the proposal was "impractical," "bureaucratic" and would cause unnecessary costs for the state.

The Justice Department revised the proposed memorandum and submitted a final proposal to the Law Council (*Lagrådet*) for its advisory review in the autumn of 1971.[32] Although the 1971 proposal was based on the earlier memorandum, it differed in some important respects, generally in response to the Bar Asociation's criticism.

The government thereupon submitted to the Parliament (*Riksdag*) in 1972 a bill proposing a Legal Aid Act, which was passed on May 26, 1972. At the same time, coordinated changes in the Code of Judicial Procedure were also passed.[33]

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[30]*Justitiedepartementet Arbetsgruppen för rättshjälpsreformen* (Justice Department Working Group for Legal Aid Reform), *P.M. Angående Reform av Samhällets Rättshjälp* (Memorandum about a Reform of the Public Legal Aid) 1970. Actually a study of legal aid had been made in the 1950's, but the report of that earlier group was "too controversial."

[31]*Rättshjälpsreformen*, Tidskrift for Sveriges Advokatsamfund 383 (Oct. 1970).

[32]The Law Council is composed principally of justices of the Supreme Court and the Supreme Administrative Court and examines the texts of proposed legislation for consistency with existing legislation and quality of draftmanship. Its opinions are advisory, and it rarely, if ever, comments on politically controversial aspects of the proposals.

[33]SFS 1972: 430. Mauro Cappelletti provided me with an Anders Bruzelius translation of pertinent sections of this Act.

In the 1973 session of the *Riksdag* several (for the most part minor) amendments to the statute were passed. In the meanwhile, a Central Authority called for in the statute to administer the new system was issuing implementing regulations, preparing forms and soon, in an effort to insure smooth transition to the new scheme in July, 1973.

Although the new law—especially in conjunction with the concurrent changes in the Procedure Code—brings about changes to the rendering of legal services in criminal cases and establishes a new category of cases where a non-criminal party is subject to possible deprivation of liberty (*e.g.* commitment to a mental institution) and the state bears all the expenses for the legal assistance,[34] the really significant changes are in the areas of legal aid in civil cases and legal advice and in the establishment of public law offices. Before turning to those, however, a very brief summary of legal aid in criminal cases follows.

A. *Legal Aid in Criminal Cases*

The basic features of the prior system have been retained in sections of the new law dealing with legal aid to suspects in criminal cases.[35] Yet, one section in the legal-aid-associated amendments to the Procedure Code[36] codifies discretion heretofore exercised by the judiciary in administering the rule as to a guilty person's reimbursement liability and another[37] appears to alter the advancing of funds for expenses by defendants who are in an economic position to do so.

The new scheme provides for appointment of defense counsel,[38] usually the lawyer designated by the defendant, who is paid out of public funds.[39] There is a presumption that the defendant will have chosen and designated a lawyer,[40] but if he has not or if the court dismisses his choice for cause, a lawyer will be designated to assist him.[41] Notwithstanding the appellation "public defense counsel" (*offentlig försvarare*), there is no requirement that the person be a lawyer working for a public law office.

Public fund advances for other expenses associated with defense are limited

[34]This type of legal assistance is called in the statute legal aid by public counsel (*rättshjälp genom offentiligt biträde*) and is governed by §§ 41-45 of the amended law. This category did not appear in the basic law passed in 1972, but was added by amendment in 1973. Examples of the types of cases in which *offentiligt biträde* are to be appointed include repatriation hearings § 41(7)] and hearings regarding mandatory commitment for institutional psychiatric care [§ 41(1)].

[35]RHA § 35-40.

[36]RB § 31:1, as amended by SFS 1972:430.

[37]RHL § 36.

[38]RHL § 35.

[39]RB § 21:10, as amended by SFS 1972:430.

[40]RB § 21:3(2).

[41]RB § 21:3:3;.

to persons in the lower income groups,[42] *i.e.* those who do not have an income of three (3) times the "base amount" (*basbelopp*) for the year.[43] One who is not eligible for this aid and is subsequently acquitted is reimbursed for the expenses of his defense.

Under the prior law, a non-indigent defendant (*i.e.* one not poor enough to be eligible for free legal proceedings) theoretically was responsible for full reimbursement of the state for the costs incurred in bringing him to trial. In fact, however, judges exercised discretion in imposing the liability on the convicted defendant. Now under the changes in the Procedure Code[44] having to do with litigation costs, judges are given explicit authority to take the defendant's "economic circumstances" into account and make this liability proportionate to his economic ability to meet it.

B. *Legal Assistance in Civil Cases*

1. STANDARDS OF ELIGIBILITY

a. *General Scope.* As a rule, any physical person is entitled to assistance in a legal matter, whether it is dealt with before a court (including appellate courts) or some other authority such as an administrative agency or arbitration tribunal.[45] Even a deceased person's estate is entitled to legal aid under the law if it needs it.[46]

There are some restrictions, however, as to the types of persons and cases which do not receive aid. For example, legal aid is not given to a person engaged in business as to legal matters arising from his business activity (except in special circumstances).[47] In addition, there is no right to legal aid if it appears that the action is based on a transfer of rights apparently made in order to get free legal aid,[48] nor is aid available to a person who does not have a definite interest in having the case handled.[49] Finally, some classes of cases (such as the preparation of tax returns) are specifically excluded,[50] and there is a provision authorizing the administrative agency charged with overseeing the scheme to exclude legal aid from classes of cases which "appear very often and normally are of a very simple character."[51]

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[42]RHL § 36.

[43]The *basbelopp* is a cost of living indexed sum of money used for a variety of purposes in transfer payment schemes. *E.g.*, a person may be entitled to a pension of 2.5 *basbelopp*, or not entitled to some benefit—as in a legal aid—if his income is above 8 *basbelopp*.

[44]Note 36 *supra*.

[45]RHL § 6.

[46]RHL § 7.

[47]RHL § 8:3. Exceptions may be made "if there are special reasons at hand considering his economic circumstances or the nature of the case."

[48]RHL § 8:4.

[49]RHL § 8:6.

[50]RHL § 8:5.

[51]RHL § 8, 2nd para.

b. *Test of the Merits.* There is no explicit statutory test of the merits of the legal aid applicant's claim or defense prior to the granting of aid, although laws in other countries usually provide for such a standard by which to screen out improbable or frivolous claims. The more stringent such a test is, of course, the less substance there is to the formal equality between rich and poor with respect to their access to legal services. Assuming he can get a lawyer to take his case, a rich man need not necessarily worry about the likelihood of his succeeding on the merits. An indigent litigant, on the other hand, in order to be eligible for legal aid in some countries must satisfy a "likely to succeed on the merits" test, or even, in an instance where there are very scarce legal services to be rationed among numerous claimants, a "significant test-case" standard.[52]

However, the Swedish reform law does contain a provision which will take on this screening function. Although § 8:6 principally is intended to foreclose the bringing of suits at state expense in which the economic value to the litigant of a favorable judgment would be minimal in comparison to the cost of litigation, it will also serve a merits-screening purpose as well.[53] In particular, the test appears to have been interpreted to mean something along the following lines: if it appears extremely unlikely that the applicant's claim—as a legal matter—would be vindicated, or that an apparently valid claim could be proven, legal aid should not be given.[54] To a large extent, and as a practical matter, this decision would be made in the first instance by the lawyer to whom the legal aid applicant has applied—that is, a private lawyer or one at a public law office. An attorney's decision not to take the case on this ground may be appealed to the local Public Legal Aid Board, and the Board's decision to the national Central Authority.[55] As articulated, this is a liberal test. It reflects confidence that the legal profession will not bring frivolous suits[56] and if implemented in that liberal spirit, will reduce the likelihood that a double-standard will emerge: one for legal aid clients, another for self-paying clients. The test is comparable to what lawyers are expected to apply in their practice.

c. *Financial Criteria.* The financial eligibility criteria also reflect a heavy

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[52]*See, e.g.*, Germany's requirement that the applicant's case have a "sufficient prospect of success" and not appear "capricious"(ZPO § 114(1) 1958), and Britain's merits test: "Whether a solicitor would advise a reasonable client who had the means to spend his own money in pursuing or defending the proceedings." Zander, *English Legal Aid System at the Crossroads*, 59 A.B.A. J. 368 (1973).

[53]Interview at *Domstolsväsendets organisationsnämnd*, June 1973. The text of § 8:6 reads as follows: "Public legal aid may not be given to one who does not have a definite interest in having his case handled."

[54]*Id.*

[55]RHL § 49.

[56]Most of the Swedish lawyers with whom I spoke expressed the belief that the Swedish legal profession had been relatively self-disciplined on issues of this type, and based on past experience would expect few frivolous suits. At the same time, they expressed confidence that the provision will be interpreted to include any litigant with a "colorable claim."

juridical right approach to legal aid. The Swedish reform makes explicit uniform and impartial standards to govern eligibility and remedies the absence of "partial" legal aid under the old system. In addition, it embraces not only low-income earners but persons in the medium income brackets as well.

Specifically, the Act itself prescribes financial eligibility by setting minimum and maximum cut-off lines in terms of two multiples of the cost-of-living indexed "base sum" (*basbelopp*). The minimum cut-off is set at three[57] *basbelopp* and the maximum at eight,[58] after specified (*i.e.* ½ *basbelopp*) adjustments upward for each dependent.[59]

If the applicant's income falls below the minimum he contributes .8% of the year's *basbelopp*[60] and if above the maximum he pays all the expenses. If his income lies between these limits, he must contribute toward the cost of the litigation up to some maximum amount, which is calculated (progressively) as a percentage of his income. All costs above that amount are paid by the state, but if the total cost of the whole matter is less than the contribution he is expected to pay based on his calculated ability to do so, he pays the entire bill.[61] Graduated provisions of this type—in contrast to categorical grants to all persons below, but none above a fixed cut-off point—are more equitable vis-a-vis low and middle income persons than either the prior system, or existing legal aid schemes in most other countries. In effect, there is partial legal aid for those for whom it would be difficult or impossible to bear the full costs of the legal assistance.

Aside from the purpose of assuring partial legal aid, these eligibility criteria make clear that the Act is written to bring within its scope the legal services rendered to a very large proportion of the population. A comparison of these financial eligibility provisions with the distribution of income in Sweden gives a rough idea of how much of the population can be expected to receive at least partial assistance under this scheme. It is not easy to make this comparison, however; income statistics and the eligibility criteria are not strictly comparable for this purpose. Available income data[62] include incomes for all persons over fifteen years (no matter how much each worked during the year) and hence understates the typical household income. On the other hand, a specific

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[57]RHL § 12, 1st para.

[58]RHL § 6, 1st para.

[59]RHL § 13, 1st para. In addition, the second paragraph of this section allows for adjustments up or down in accordance with the applicant's net asset position. "If the applicant's ability to pay is substantially increased by his wealth . . . or considerably reduced by debt . . ., his estimated yearly income shall be adjusted in such a way that a fair sum is added or subtracted." *Id.* The forms prepared by DON for calculation of an applicant's eligibility and contribution include specific guidelines for interpreting this section.

[60]In 1973, this minimum contribution to be paid by applicants earning less than 3 *basbelopp* was 50 Swedish Kronor, approximately $12.50.

[61]RHA § 12.

[62]1973 STATISTICAL YEARBOOK FOR SWEDEN, 336.

individual's income would be adjusted according to the number of independents he supported before comparison to the eligibility criteria. With these reservations in mind, it is nonetheless striking to note that in 1971 almost 45 percent of the income earning population earned less than three *basbelopp* and about 85 percent earned less than eight *basbelopp*. Put another way, 45 percent of the income earning population would have been eligible for legal aid in 1971 (had the program then been in effect) for the minimum contribution toward the cost of their legal assistance, and up to 85 percent would have received some assistance in meeting the costs if the costs had exceeded the calculated amount they were expected to pay.

On the whole, these standards of eligibility are typical of what one expects in a legal aid program committed to the judicial right approach to legal assistance for low income groups. Both the merits and the means tests are designated as national standards for use throughout the country and are overseen by an agency charged with ensuring uniform application. On the other hand, the reform's coverage of such a large percentage of the population seems more like a welfare right feature; that is, it indicates a clear intention that access to legal services is to become a modern social right in Sweden, perhaps ultimately in the sense in which access to health care services is already such a right. In other words, the Act is not concerned simply with providing poor or even low income groups with legal assistance; in addition, it establishes a public sector presence in the rendering of legal services to a majority of the population.

2. BENEFITS PROVIDED

a. *Litigation Costs and Attorney's Fees.* Virtually the entire range of costs incurred in litigation are included in the benefit scheme, subject of course to the applicant's ability to pay for some if he is able to do so. Most important among these are the lawyer's fees, but included as well are necessary travel and lodging expenses of the litigant, his lawyer or witnesses, court fees, translation expenses and costs of producing evidence such as blood tests.[63] In cases in which a claimant must post security such as a surety bond, the state may advance the necessary guarantee as well.[64]

One potential expense incurred in litigation in Sweden (as in many countries as well) is the cost of reimbursing the other side for his expenses when he is successful on the merits. This liability is not included in the benefits conferred under the legal aid law and, in the absence of some institutional surrogate for legal aid for such expenses, could work a substantial inequity on a successful litigant sued by a legal aid recipient, presumptively without resources with

[63]RHL § 9.
[64]RHL § 10.

which to reimburse him for his litigation costs. It is in this area of liability for the opponent's costs that the Swedish institution of legal costs insurance is likely to play its most important complementary role to the legal aid provided by the state.

Legal costs insurance is available from all the general damage insurance companies in Sweden and covers all costs incurred by the insured in a legal dispute.[65] The insurance is very common; approximately 80-90 percent of the Swedish population is covered. Coverage is automatically included with certain other types of insurance such as a homeowner's comprehensive or automobile insurance policies. By their terms, legal costs insurance clauses apply only in the event and to the extent that the insured's costs are not covered by the legal aid scheme, and in this sense it is both subsidiary and complementary to public legal aid. However, the insurance specifically indemnifies the insured for the expenses he may be ordered to pay his opponent. As long as this legal costs insurance remains substantially unchanged in coverage and the same high percentage of the population remain insured, few successful civil litigants should find themselves unable to collect their expenses from their legal aid supported opponent.

b. *Legal Advice.* Another important new feature in the reform act is its provision for legal advice.[66] Any person may go to a public law office, or to a private lawyer who will give advice on these terms, and receive 20-25 minutes of legal advice for a fixed sum (.8 percent of the year's *basbelopp*; in 1973, about $12.50).[67] In special cases, the fixed charge may be reduced or waived, if the person has financial difficulties.[68]

Lawyers can give advice under this provision on almost any kind of matter[69] and may prepare legal documents or, if the person appears to have a problem requiring additional legal assistance and qualifies for at least some legal aid, the lawyer is expected to help prepare the application for legal aid. The whole legal

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[65]H. Wiberg, *Legal Costs Insurance in Sweden,* INT'L BAR J., May, 1973, at 38. The balance of the description in this paragraph of legal costs insurance paraphrased from the Wiberg article, at 38-40.

[66]RHL § 46-48.

[67]The Act makes no mention of how much advice is to be given for the single uniform fee. The estimate of 20-25 minutes was determined in the following manner:

DON has been gathering law office cost information from the pre-existing legal aid institutions and from some private law firms (through the Swedish Bar Association) to establish a data base from which to determine appropriate fee schedules. (See text accompanying note 79 *infra.*) DON's analysis of this data suggested an average hourly rate of 140 Swedish kronor (SKr) would make a law office self-financing in 1973, including competitive salaries for lawyers. (DON has also been trying to extablish average costs for certain kinds of recurring cases or legal problems, such as the drafting of a will or the handling of a paternity suit). From a base of 140 SKr, 50 SKr will purchase about 20-25 minutes of legal advice. Interviews at DON and *Sveriges Advokatsamfund, supra.*

[68]RHL § 47. DON issues guidelines to lawyers to assist in applying this waiver in particular cases.

[69]RHL § 46. Again, there are a few exceptions such as the preparation of tax returns as under the legal aid sections of the Act.

aid scheme assumes as a rule that legal aid applicants will start with a legal advice visit, although many matters will be simply confined to legal advice. If the matter does develop into a legal aid case, the advice fee is credited toward the person's contribution to legal aid expenses.

One who goes to a public law office must be helped there, but of course there is no requirement a private lawyer take on legal advice clients on these terms. If the private lawyer does give advice, however, administration is pretty much entrusted to him. The client fills out a short form, pays his fee, and receives advice. The lawyer has some discretion to waive or lower the fee, in which case he will be reimbursed by the state through the local Legal Aid Board. Neither in this waiver-of-fee area nor any other aspect of his rendering legal advice in particular cases will he be routinely "second-guessed" by the local Legal Aid Board; instead, regular reports of aggregates (such as the number of persons for whom the fee was waived) will be periodically reviewed to assure that private firms are operating in roughly the same way.[70]

There are no financial conditions for receiving legal advice on these terms because (at least in the typical case) there is no government subsidy involved, *i.e.* advice is paid for at the "going rate" for legal service. Legal advice is not cheaper than it was before July, 1973. Why include such a provision in a legal aid act? The Government believed that citizens were apprehensive about seeking advice from lawyers and instead sought it from friends or others because of uncertainty and ignorance of the costs involved. In this sense, consumer ignorance was a significant determinant of the demand for legal services. The principal purpose of this section of the Act, therefore, was to remedy the apprehension by assuring citizens that they only need pay a particular fixed sum for some legal advice, which amount is known in advance of the visit.

Taken together, the benefits provided under the Act are a mixture of juridical and welfare approaches. The juridical rights' emphasis on uniformity is reflected in the national, detailed enumeration of the particular expenses of litigation which are included in the scheme. However, the legal avice benefits cut back in some degree the emphasis on individual responsibility characteristic of the juridical right approach and they are consistent with the welfare right approach's goal of raising individual consciousness about the legal system and the approach's emphasis on the physical and psychological accessibility of legal services.

3. ADMINISTRATION

There are several important actors operating at different levels in the administration and supervision of legal assistance in civil cases. At the regional level, Legal Aid Boards have been established in each of the six centers where

[70]Interview at DON, *supra.*

appellate courts sit.[71] At the national level, there is a Central Authority; as noted earlier, the Judicial Court Administrative Board (*Domstolsväsendets Organisationsnämnd* [DON]) has been appointed Central Authority.[72] Finally, at the lawyer-client level, both private practicing lawyers and lawyers at public law offices play significant roles in administration of the scheme as well.

a. *Legal Aid Boards.* Each legal Aid Board (*Rättshjälpsnamnd*) includes a judge who acts as chairman, two attorneys (one in private practice and one working for the public law office) and two citizens of the region.[73] The Boards are responsible for granting and denying applications for legal aid and for determining legal fees in matters not dealt with by the general courts.[74] Where the case will involve at least a partial government subsidy, *i.e.*, where the legal expenses will exceed the means-tested contribution the applicant is required to pay, the Board must approve the application for aid before the lawyer continues the case. In practice, most of the day-to-day functions of the Board will be delegated to full-time officials, with the Board serving principally a watch-dog function to assure uniform application of the Act and implementing directives in its region of the country.

Even the function of the Board's full-time officials may take on a rather bureaucratic, watch-dog character as well. For one thing, the applicant's financial eligibility will be calculated in accordance with the regulations issued by DON and on the strength of the applicant's affidavit about his income and assets by the private attorney or lawyer at a public law office from which he sought legal assistance. The Board will be responsible for checking the completeness of the application and verifying the applicant's income declaration where it has reason to doubt it, or as a random check. In the second place, as noted earlier, the initial determination of whether the applicant has a sufficient interest in the outcome or a strong enough legal or evidentiary case to

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[71]Indeed, the territorial jurisdiction of the regional Legal Aid Boards are coterminus with the appellate court districts. The six cities are Gothenburg, Jönköping, Malmö, Stockholm, Sundsvall and Umeå. SFS 1973:248, § 1.

[72]The intention is, however, that these functions now performed by DON will be transferred to a national Court Administration (*Domstolsverk*) on July 1, 1975.

[73]RHL § 4. §§ 3, 4 & 5 govern the composition and basic procedural aspects of the Legal Aid Boards.

[74]In matters before general courts, the courts retain the authority to fix attorneys' fees as they traditionally have done under Swedish judicial procedure and they continue with full administrative responsibility over the provision of legal aid to criminal defendants, *i.e.* they will appoint counsel and decide on their fees as well as examine applications for legal aid pursuant to RHL § 36.

The relative roles of the government and of the courts in setting attorneys' fees was a point of sharp contention in the evolution of the reform act. The original memorandum of 1970, see text accompanying note 17, *supra*, had Legal Aid Boards both processing applications for legal aid and setting attorneys' fees as well. The legal profession did not want to see both of these functions move from the judicial branch to a state administrative body, and argued strongly that the fee-setting function should remain with the courts, which it did in the revised formulation of 1971. ***But see***, text accompanying note 79, *infra*.

justify litigation will be made by the lawyer who agrees to help; in this area too, Board personnel will be responsible for verifying that the case fits within the evolving standards and guidelines.

The presumption is very strong that most applications for aid will be approved. According to the instructions issued by DON, the Board's full-time officials are not to deny an application for aid unless it is obviously inappropriate to grant aid, and all such denials are to be specifically reported to the Board members at their regular meeting.[75]

b. *The Central Authority.* As noted, the new law requires appointment of a Central Authority (*Centralmyndighet*) to supervise and coordinate legal aid.[76] In this capacity, DON's principal task therefore is to supervise the activities of the six regional Legal Aid Boards and the public law offices. To do this, it issues forms and regulations to govern implementation of the new scheme with the specific goal of assuring "correct" and "uniform" application of the Legal Aid Act. It hears appeals from the decisions of local Legal Aid Boards denying legal aid, and is the highest authority on questions of that type, *i.e.*, there is no further appeal from a decision of the Central Authority regarding a legal aid application.[77]

The Central Authority is caretaker of the state's interest in keeping the expenses of legal aid as low as possible consistent with the purpose of the Act to make legal services more accessible to a large portion of the population. To this end, it has two additional powers. For one, it has authority to appeal on behalf of the government decisions of courts setting attorneys' fees in specific cases where these are to be paid out of public funds. Its second, more controversial, authority is to prescribe standard fees for attorneys in matters before or outside ordinary courts and other authorities. Standard fees for attendance of parties, witnesses, etc. reimbursed out of public funds, (before courts or other authorities are prescribed by the Cabinet.)[78] In short, except in cases where he appears in an ordinary court and his fees are set by a judge, an attorney's compensation in the typical case will be limited to the fee schedule prescribed by DON.[79]

DON faces a dilemma in exercising this fee-prescribing authority. On the one hand, the purpose of the fee schedules in particular and the reason for including

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[75]DON interview, *supra.*

[76]RHL § 3.

[77]RHL § 49.

[78]RHL § 22.

[79]It should be emphasized that the fee schedules are not necessarily dispositive of the compensation to a particular attorney in any given case, but instead are intended as a guide for use by the local Legal Aid Board when acting on legal aid application which will include the lawyer's fee. Deviations from the prescribed schedules (either up or down) are permissible where the lawyer can show the matter required an abnormal expenditure of time, or skill, or other circumstances warranting deviation from the standard renumeration.

such a large percentage of the population within the law's scope generally is to force down and control the costs of litigation, or at least that share of the society's legal expenses that the state is involved in reimbursing. On the other hand, it must assure that the fee schedules are not so divergent from the "going rate" for private lawyers that private lawyers will not take legal aid assisted clients, or that two classes of attorneys develop as is the case in many countries: one group of lawyers for legal aid recipients, another for those more well off.[80]

DON's *modus operandi,* described below and in footnote 67, *supra,* is to include in its data base average costs from private law firms as well as those from pre-existing legal aid offices.[81] This is to assure that the fee schedules DON is now in the process of developing do not diverge significantly from fees heretofore charged by private lawyers. However, the principal guide for the prescribed fees and changes to them is to be the cost experience of the public law offices established as part of the reform. But even if fees based on these costs were to diverge from fees charged by private lawyers, the Act's coverage of a very large percentage of the population assures that few lawyers will be able to ignore state-assisted clients and restrict themselves to serving a narrow, well-off clientele.

c. *Private Practicing Lawyers.* Lawyers in private practice also play an important role in administration of the system. They must play such a role in any legal assistance program—as this one—where individuals (notwithstanding the financial assistance they receive from the state) have the option of going to a lawyer at a private law firm or to one at a public law office. In Sweden there is no requirement that a lawyer take the case or client and in this sense private law practice remains a "free profession." However, if he does take such a case—and as I have suggested above it is clear from the broad coverage of the statute that most lawyers will take them—he must comply with the various regulations prescribed by the supervisory authority (now DON), including assisting the client in his application to the local Legal Aid Board to authorize disbursement from public funds (if necessary) to compensate the lawyer. Of course, by linking into the system in this way the lawyer also implicitly agrees (at least as a first approximation) to the fee schedules promulgated by DON.

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[80]Fee schedules are often included in the legal aid programs of European nations; and where they exist, they are usually below the fees charged by lawyers to non-legal-aid clients. See, *e.g.,* Cappelletti & Gordley, at 371, n. 145.

[81]Interestingly, based on preliminary analyses of the data base, the average hourly cost of running a private law office appears to be slightly less than the cost of the pre-existing legal aid offices. Interviews at *Sveriges Advokatsamfund* and DON, *supra.*

DON has been using the data base to obtain average costs for recurring cases in addition to determining an average hourly cost of running a law office. With the averages obtained from these analyses as a guide, DON has tried, but has not yet succeeded, to set subject-matter fee schedules (*saktaxa*), as distinguished from merely fixing an hourly compensation rate, for various categories of cases.

Considerable responsibility remains with the private profession, however, because much of this procedure is largely self-administering in the sense that it is administered by the private lawyer at the lawyer-client level. From available cost and fee schedules the lawyer can calculate what the expenses will be in handling the case, and from the information provided to him by the client about his income, dependents and assets, calculate the portion the client must pay toward the total. If it appears the case will require expenditure of public funds (to make up the difference between the expenses and the portion the client pays), they jointly will prepare an application to submit to the Legal Aid Board for approval. In the typical case—assuming the lawyer has applied the means-test correctly and it is not a case where the Board would seriously dispute the client's "interest in the matter" under the merits test of § 8.6—approval should follow almost automatically.

Significantly, the Act purports to bring within its scope the relationship between lawyer and client even in cases where the expenses do not exceed the calculated contribution the client is expected to pay,[82] *i.e.* cases in which there is no "aid" (*i.e.*, state subsidy) in the normal sense of that term, provided the private lawyer agrees to it; lawyers at public law offices must take such cases. In other words, although the client will pay the entire bill in such cases, the expenses will be calculated as if the disbursement of public funds were involved, *i.e.*, according to the cost and fee schedules promulgated by the Cabinet or DON. In these instances, although there is no need for an application to the local Legal Aid Board; however, the lawyer is required to issue to the client a certificate including his calculation of the maximum amount the client should pay and the expenses incurred in the case.[83]

This wide scope makes it especially clear that the Act serves more than the limited purpose of assuring that legal services are available to low income persons. It serves a cost control purpose as well, even in instances where the individual pays the entire bill. This state involvement in cost-control in cases not involving state expense (not surprisingly) did not meet with approval of the private profession; however, the profession was not successful in having this aspect of the proposal deleted from the reform Act.

d. *Public Law Offices.* Another unusual feature in the new scheme is the establishment of at least one public law office (*allmän advokatbyrå*) in each of the twenty-four counties in Sweden. To expedite implementation, the fifteen existing legal aid offices were reorganized (and renamed) into public law offices in July, 1973.[84] Additional offices are being set up in other places where

[82]RHL 16.

[83]Legal Aid Decree, *supra* note 2 at § 8.

[84]*Kungl. Maj:ts instruktion för de allmänna advokatbyräerna* (Instructions for the Public Law Offices), SFS 1973: 249.

there has been no legal aid office (*e.g.* in a county formerly using the *Jamtland* system for legal aid), and in places where a dirth of private law firms indicates a public law office is warranted. Each office is being staffed with at least three lawyers, but the size of particular offices will be a function of the demand for legal services in the community as well as other factors (such as the availability of lawyers to fill the positions).[85]

The public law office concept differs from the idea of a legal aid office in a very important respect. Aside from an initial transition period during which they will be partially supported by the state, the public law offices are not to be subsidized by the national or local governments in the way that legal aid offices traditionally have been. The plan is that they will compete with private law offices and be entirely self-financing. In other words, the public law offices are expected to operate under the same procedures applicable to private law firms. An individual seeking legal assistance may go to a private lawyer (as described above) or to a public law office. Just as when dealing with a private lawyer, should the disbursement of public funds be required because the costs of the legal services calculated from the fee schedules issued by DON exceed the applicant's calculated contribution to the expenses, the lawyer at the public law office will help the applicant prepare an application to the local Legal Aid Board for state assistance in meeting the expenses. Assuming it is granted, the state pays the public law office the difference between its charges and the client's contribution just as it would were the client being assisted by a lawyer at a private law firm. It is in this way that the offices are expected to be self-financing.

It is important to note that the state's role in providing legal assistance function is separate from its administrative and supervisory functions as exercised by the local Legal Aid Board and the fee-prescribing function of the national Central Authority (DON). The original proposed memorandum did not separate the legal assistance and supervisory functions. The state's role in the legal representation of citizens in their legal disputes (*i.e.*, what is now done by public law offices) was "unhappily mixed" (in the words of one lawyer with whom I spoke) with the government's role in the administration of legal aid (*i.e.*, what is now done by the Legal Aid Boards). This was one of several features of the original proposal very severely criticized. The setting up of economically independent and self-financing public law offices was an acceptable compromise to the private legal profession, notwithstanding its apprehension about a government presence in the form of publicly employed salaried lawyers.

[85]One person with whom I spoke thought DON would experience some difficulty in filling the positions at the public law offices. He expected compensation to be less than at the typical private law firm, but the public law office lawyer will probably have longer vacations and shorter work days.

Are these administrative features characteristic of a juridical or a welfare right approach? The juridical right's emphasis on uniformity and on individual rights and responsibilities appears to predominate in the administration of the new legal aid program. With respect to uniformity, the new system draws its standards from a central national source, the Legal Aid Act, as supplemented by implementing regulations and instructions prepared by a Central Authority. In addition, it includes a quasi-judicial administrative structure designed to ensure continuing uniformity and impartial application of the standards by lawyers and the local Legal Aid Boards.

The system also emphasizes individual responsibilities of the applicant. In the first place, the individual client must first recognize that he has a legal problem, or at least that he should go for legal advice. Secondly, he must select a lawyer to help him. Finally, he must overcome whatever psychological alienation or apprehension he may feel about lawyers and their work to communicate the substance of his problem and then assume a normal client's responsibility of decision-making after the lawyer outlines the alternative courses of action.[86]

In many countries, these responsibilities often are significant obstacles to the utilization of legal services by persons otherwise eligible for subsidized assistance. Comparatively speaking, however, they probably will not weigh heavily on legal aid applicants in Sweden. For one thing, the egalitarian character of Swedish society generally suggests that the psychological divide will not be great between a Swedish lawyer and his legal aid client who often will be, as we have seen, a middle income person. But in addition, the Swedish program has two features which deemphasize the responsibility placed on the individual, namely legal advice and the public law offices.

It is probably fair to characterize legal advice and public law offices as welfare right approach features. Assuring availability of legal advice at a fixed sum is one way to help individuals learn when the legal system will work for them. The establishment of public law offices in geographically dispersed parts of the country will augment the felt presence and accessibility of legal services in those areas, and is an implicit recognition of the relationship of legal and social problems. These means and goals are characteristic of a welfare right approach to legal aid.

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[86]Cappelletti and Gordley observe that the problem of recognizing a legal problem ". . . may never have been easy for the poor man whose cultural background may alienate him from the norms of the law, but it is far more difficult for him in the modern welfare state where his life is closely affected by a tangled skein of legislation." *Op. at.*, at 400. As to the problem of choosing a lawyer: ". . . selecting a lawyer . . . may weigh heavily on the poor man who may know even less of lawyers than he does of the law." *Loc. cit.*. The authors also note that difficulties in communication to a lawyer should not be underestimated; they emphasize that the lawyer is likely to have a substantially different cultural background and probably no special understanding—if not ignorance—of problems of poor or low income legal aid applicants. *Loc. cit.* For reasons indicated in the text which follows, however, I believe these observations have much less applicability to Sweden than they may have to other countries.

IV. Conclusion

The deficiencies of legal aid under the old system in Sweden have largely been remedied. The practical constraints—at least insofar as they were economic—on a person's choice of legal counsel have been eliminated because individuals may choose any private lawyer (willing to take the case and client) or lawyer at a public law office without effect on his right to have the services subsidized by the state if he needs it. The new program is sensitive to possible divergences between the "going" private rate for legal assistance and the prescribed fee schedules. The merits-of-the-claim test for eligibility is explicit and liberal, as is the means-test. Moreover, financial eligibility is not categorical; depending on the total amount of expenses involved and the individual's income, there is partial legal aid to help citizens bear significant legal expenses. Opportunities for a "legal-health check-up" have been instituted in the form of fixed-fee legal advice. And finally, both the physical and psychological accessibility of lawyers have been increased through the institution of public law offices.

The program is heavily committed to the juridical right approach to legal aid, although there are as we have seen some welfare right approach features as well. But because the program is multi-purposed, *i.e.*, it is not aimed simply at providing legal services to low income groups but also is intended to control the costs of legal services and partially socialize the legal profession, some of the features are not the logical consequence of either side of the juridical right-welfare right distinction.

Finally, there are some uncertainties unanswerable at this point because of the very brief period the new system has been in effect. For one thing, what effect will the lower (effective) price for legal assistance have on the demand for legal services? Demand for most other goods and services, of course, increases as the price declines. If there is an increase in demand which cannot be met with a larger supply of lawyers or increased efficiency (so that more legal services may be rendered with the same number of lawyers), there will be strong pressure on price as a rationing device for legal services. The probable intermediate consequence of such pressure is a divergence between the going rate and the fee schedules, and decreased participation by private lawyers in the program. Increased awareness and use of legal advice might itself increase the total demand function for litigatory legal assistance in this manner too. But even without a significant excess demand problem, disparity between the fee schedules and the market prices of legal services is a potential problem requiring vigilance. When fee schedules are too low, a double-standard of legal assistance emerges. When they are too high (perhaps because the data base for their determination—costs at public law offices—reflects relative inefficiencies at the public law offices vis-á-vis private law firms), there is an unanticipated

redistribution of income from the general community to the private legal profession. This is undoubtedly not the sector that even a conservative Government in Sweden would think warranted a redistribution of this kind.

Other unanswered questions have to do with respective roles of the public law offices and private law firms. The character of competition if any between private law firms and the public law offices is also uncertain. Some anticipate as a consequence of consumer preferences public law offices in due course will be specializing in some areas (*e.g.*, family relations) and private law firms in others (*e.g.*, the representation of criminal defendants). Is it likely that the public law offices will assume the reform-minded character often associated with the American Office of Economic Opportunity's neighborhood legal services offices, the archetypical feature of a welfare right approach to legal services? This is doubtful, though possible; the profession is relatively conservative and adjudication is less often relied upon in Sweden than in the United States to bring reform. Most speculative is the question whether the Government will ultimately be satisfied with partial socialization of the profession which the cost controls and the public law offices of this reform represent.